

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

PORTIA D. JENKINS,)	
)	
Plaintiff,)	
)	
v.)	1:12CV1251
)	
CAROLYN W. COLVIN,)	
Acting Commissioner of Social)	
Security,)	
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER

OSTEEN, JR., District Judge

This matter is before this court for review of the Memorandum Opinion and Recommendation ("Recommendation") filed on February 2, 2015, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 15.) In the Recommendation, the Magistrate Judge recommends that the Commissioner's decision finding no disability be affirmed, that Defendant's motion for judgment on the pleadings (Doc. 12) be granted, that Plaintiff's motion for judgment on the pleadings (Doc. 10) be denied, and that this action be dismissed. The Recommendation was served on the parties to this action on February 2, 2015. (Doc. 16.) Counsel for Plaintiff filed timely objections (Doc. 17) to the

Recommendation, and counsel for Defendant filed a response to Plaintiff's objections (Doc. 18).

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specific proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

Plaintiff generally contends that she meets or medically equals Listing 12.05C, (see Pl.'s Objections (Doc. 17) at 1; Pl.'s Brief Supp. Mot. for J. on the Pleadings (Doc. 11) at 3-8), which provides that a person is disabled if that person demonstrates: (1) a showing of "deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22"; (2) a "valid verbal, performance, or full scale IQ of 60 through 70"; and (3) "a physical or other mental impairment imposing an additional and significant work-related limitation of function." 20 C.F.R. pt. 404, subpt. P, app. 1, § 12.05; see also Hancock v. Astrue, 667 F.3d 470, 473 (4th Cir. 2012). The Administrative Law Judge ("ALJ") conceded that Plaintiff met the

second and third prongs of Listing 12.05C,¹ but the ALJ ultimately concluded that Plaintiff did not meet the requirements of the first prong because "the evidence of record does not support a finding that the claimant has the requisite adaptive deficits." (Tr. at 22.)²

In support of this conclusion, the ALJ noted that Plaintiff "generally earned Cs or better in eighth and ninth grades," "worked in several jobs in the textile industry," "worked at the substantial gainful activity level performing foam-cutting tasks in a foam fabrication plant," "was married twice and able to raise two children," "can take care of her personal finances," and "was able to care for her elderly parents and currently babysits her grandchildren." (Id. at 22-23.) Because of the limited review that this court is required to undertake, this court will not reweigh the evidence that supports and contradicts the finding that Plaintiff did not demonstrate the required adaptive deficits to meet Listing 12.05C. See Hancock,

¹ The ALJ found that Plaintiff, in addition to borderline intellectual functioning, had the following severe impairments: "degenerative joint disease of her bilateral knees, degenerative disc disease, obesity, asthma, an anxiety-related disorder, [and] major depressive disorder." (Tr. at 20.) The ALJ also noted that "intelligence testing . . . revealed IQ scores of 60 through 70." (See id. at 22.)

² Transcript citations refer to the Administrative Transcript of Record filed manually with the Commissioner's Answer. (Doc. 8.)

667 F.3d at 476. This court agrees with the Magistrate Judge that the ALJ's findings should not be disturbed on this point. (See Recommendation (Doc. 15) at 9-12.)

However, the ALJ does not explain why it did not credit the opinion of Gregory A. Villarosa, Ph.D., the consultative psychological examiner who conducted an evaluation of Plaintiff and found that (1) Plaintiff's current "Full-Scale IQ score of 70 indicates current functioning in the borderline range"; (2) "[b]ased on [Plaintiff's] past academic and employment history, premorbid intellect was estimated to be in the borderline or worse range"; and (3) Plaintiff's "present results are commensurate with expectations and do not appear to suggest any appreciable change from prior functional abilities." (Tr. at 231.) These findings suggest that Plaintiff has demonstrated borderline intellectual functioning along with "deficits in adaptive functioning" that are consistent with that level of intellectual functioning.

In her opinion, the ALJ recognized that Dr. Villarosa diagnosed Plaintiff with, among other things, "borderline intellectual functioning." (Id. at 30.) Moreover, the ALJ's opinion indicates that there is at least some evidence to support Dr. Villarosa's finding, that is, Plaintiff was enrolled

in special education classes in school, only completed the ninth grade, and had low grades in elementary school. (Id. at 22.)

Although this court will not reweigh the conflicting evidence as to Plaintiff's deficits in adaptive functioning, this court does evaluate whether the ALJ properly considered all medical opinions on this point. See 20 C.F.R. § 416.927(b). As a statement from a psychologist about the nature and severity of Plaintiff's intellectual impairment, Dr. Villarosa's diagnosis and report is a "medical opinion" that the ALJ must have evaluated carefully. See id. § 416.927(a)(2). In evaluating Dr. Villarosa's opinion, which the ALJ does in the section of her opinion discussing Plaintiff's residual functional capacity, the ALJ notes that Dr. Villarosa "opined that [Plaintiff's] condition would result in some difficulty with work-related activities due to problems with depression and anxiety as well as limitations in general intellectual functioning." (See Tr. at 31.) Then, in the same paragraph and after discussing the findings of the State agency psychological consultants, the ALJ concluded:

These opinions are given significant weight because they are supported by the medical evidence of record, which reveals that [Plaintiff] has not gotten any significant mental health treatment. They are also supported by [Plaintiff's] activities of daily living,

which include caring for children and helping her grandson with his homework.

(Id.) Because this statement seems to be contrary to Dr. Villarosa's findings, it does not appear that this statement regarding the ALJ's confidence in the medical opinions is made in relation to Dr. Villarosa's opinion. Meanwhile, if the ALJ did in fact assign significant weight to Dr. Villarosa's opinion, it is not clear how the ALJ reconciled Dr. Villarosa's finding that Plaintiff's "past academic and employment history" indicates Plaintiff's "premorbid intellect was . . . in the borderline or worse range," (id. at 231), with the ALJ's finding that Plaintiff did not display deficits in adaptive functioning.

Defendant explains that the ALJ rejected Plaintiff's argument that she met or medically equaled Listing 12.05C by noting that Plaintiff was able to perform a number of daily activities that the ALJ found to be inconsistent with borderline intellectual functioning, such as performing foam-cutting tasks in a foam fabrication plant, working at several positions in the textile industry, and caring for her elderly parents and her grandchildren. (See Def.'s Mem. in Supp. of Mot. for J. on the Pleadings (Doc. 13) at 7; see also Tr. at 22-29.) However, this argument does not explain how to interpret the ALJ's finding, explained earlier, in which it is not clear whose opinions the

ALJ found persuasive and why. Although it is a close call, this court finds that the ALJ's opinion does not sufficiently clarify whether Dr. Villarosa's opinion was persuasive or rejected and, if rejected, why that opinion was rejected. "[I]t is the duty of the administrative law judge reviewing a case . . . to make findings of fact and to resolve conflicts in the evidence."

Hays v. Sullivan, 907 F.2d 1453, 1456 (4th Cir. 1990).

Furthermore, this argument does not explain why the ALJ discounted the findings of Dr. Villarosa along with whether or how the medical evidence of record contradicts Dr. Villarosa's medical opinion. As other courts have found, "the fact an individual is able to work, complete household chores, and raise a family is not inconsistent with mild mental retardation."

Radford v. Astrue, No. 5:08-CV-421-FL, 2009 WL 1675958, at *6 (E.D.N.C. June 10, 2009); see also Shaw v. Astrue, No. 4:08-CV-132-D(2), 2009 WL 2486932, at *6-7 (E.D.N.C. Aug. 13, 2009)

("[The Diagnostic and Statistical Manual of Mental Disorders] and Listing 12.05(C) assume many, if not most, mildly mentally retarded individuals will be able to work. . . . Therefore, the fact that [a claimant] has a history of continuous employment in the past is irrelevant to whether he has subsequently become disabled due to the development of additional severe

impairments.” (quoting Muntzert v. Astrue, 502 F. Supp. 2d 1148, 1158 (D. Kan. 2007) (alterations in original)). Therefore, the fact that the ALJ referenced Plaintiff’s activities of daily living and past work experience does not specifically address Dr. Villarosa’s findings. As such, Defendant’s argument is unpersuasive.

Because the ALJ did not reconcile Dr. Villarosa’s opinion with the ALJ’s finding that Plaintiff lacked sufficient deficits in adaptive functioning and did not offer an explanation that would permit meaningful review without some degree of speculation, this court will remand for further proceedings pursuant to sentence four of section 405(g) of the Social Security Act, as incorporated by section 1631(c)(3), see 42 U.S.C. §§ 405(g), 1383(c)(3), so that the ALJ may further evaluate the opinion of Dr. Villarosa as it relates to the requirements of Listing 12.05C.

IT IS THEREFORE ORDERED that the Magistrate Judge’s Recommendation (Doc. 15) is **ADOPTED IN PART**.

IT IS FURTHER ORDERED that Defendant’s decision finding no disability is **REVERSED** and that this matter is **REMANDED** under sentence four of 42 U.S.C. § 405(g), for further administrative proceedings, consistent with this Memorandum Opinion and Order,

to determine whether Plaintiff had deficits in adaptive functioning that satisfy the disability listing in 20 C.F.R. pt. 404, subpt. P, app. 1, § 12.05C, including, but not limited to, specifically addressing the opinion of Dr. Villarosa. As a result, Defendant's motion for judgment on the pleadings (Doc. 12) is **DENIED** and Plaintiff's motion for judgment on the pleadings (Doc. 10) is **GRANTED IN PART** and **DENIED IN PART**, as this court declines to enter an immediate award of benefits.

A judgment consistent with this Memorandum Opinion and Order will be entered contemporaneously herewith.

This the 3rd day of June, 2015.

William L. Ostun, Jr.

United States District Judge